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BEFORE THE ARIZONA CORPORATIC

IN THE MATTER OF THE)	DOCKET NO.
REORGANIZATION OF UNISOURCE)	E-04230A-03-0933
ENERGY CORPORATION.)	
<hr/>		<u>PREHEARING CONFERENCE</u>

At: Tucson, Arizona

Date: June 17, 2004

Filed: JUN 18 2004

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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ORIGINAL

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before
3 the Arizona Corporation Commission, in Room 222 of
4 said Commission, 400 West Congress, Tucson, Arizona,
5 commencing at 10:15 a.m., on the 17th day of June,
6 2004.

7
8 BEFORE: WILLIAM A. MUNDELL, Commissioner
9 JEFFREY HATCH-MILLER, Commissioner
KRISTIN K. MAYES, Commissioner

10 JANE L. RODDA, Administrative Law Judge

11

12 APPEARANCES:

13

For Applicant UniSource Energy Corporation:

14

ROSHKA HEYMAN & DeWULF, PLC
By Mr. Raymond S. Heyman
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

17

18 For the Arizona Corporation Commission Staff:

19

Mr. Christopher Kempley, Chief Counsel
Legal Division
1200 West Washington
Phoenix, Arizona 85007

20

21

22 For Intervenor Residential Utility Consumer Office:

23

Mr. Daniel Pozefsky
1110 West Washington, Suite 220
Phoenix, Arizona 85007

24

25

1 APPEARANCES: (Continued)

2

For Intervenors IBEW Locals 387 and 769:

3

LUBIN & ENOCH, P.C.
By Mr. Nicholas J. Enoch
349 North Fourth Avenue
Phoenix, Arizona 85003

4

5

6

For Intervenor Lawrence V. Robertson, Jr.:

7

Mr. Lawrence V. Robertson, Jr., In Propria Persona
333 North Wilmot, Suite 300
Tucson, Arizona 85711

8

9

10 For Intervenor Marshall Magruder:

11

Mr. Marshall Magruder, In Propria Persona
Box 1267
Tubac, Arizona 85646

12

13

For Intervenor Arizona Utility Investors Association:

14

Mr. Walter W. Meek, President
2100 North Central Avenue, Suite 210
Phoenix, Arizona 85004

15

16

17 For Intervenor Mohave County: (Appearing
Telephonically)

18

Mohave County Attorney's Office
By Mr. John White
Post Office Box 7000
Kingman, Arizona 86402

19

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21

For Intervenor Mohave Valley Elementary School
District: (Appearing Telephonically)

22

23

Mr. Phil Sauceman, Superintendent
Mohave Valley Elementary School District
8450 South Olive
Mohave Valley, Arizona 86440

24

25

1 APPEARANCES: (Continued)

2

3 For Intervenor Punto de Vista Property Owners
4 Association: (Appearing Telephonically)

5

6 Mr. Marc Goldstone, Director
7 4090 Yucca Road
8 Bullhead City, Arizona 86429

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13 DAWNA J. BOSWELL, RPR
14 Certified Court Reporter
15 Certificate No. 50326

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1 ALJ RODDA: Let's go on the record.

2 This is the time set for the Prehearing
3 Conference in Docket Number E-04230A-03-0933 In the
4 Matter of the Reorganization of the UniSource Energy
5 Corporation.

6 Good morning, everyone. My name is Jane
7 Rodda, and I am the administrative law judge assigned to
8 this matter.

9 With me today on the bench are Commissioners
10 Hatch-Miller and Mayes.

11 First thing we will do this morning is take
12 appearances of the parties, and so we will start with
13 UniSource.

14 MR. HEYMAN: Good morning, Your Honor, good
15 morning, Commissioners, Ray Heyman from the law firm of
16 Roshka Heyman & DeWulf on behalf of UniSource Energy
17 Corporation.

18 ALJ RODDA: Welcome to Tucson.

19 And on behalf of the intervenors, RUCO.

20 MR. POZEFSKY: Good morning, Your Honor,
21 good morning, Commissioners, Daniel Pozefsky on behalf
22 of RUCO.

23 ALJ RODDA: And on behalf of Mohave County.

24 MR. WHITE: John White, Your Honor, the
25 Mohave County Attorney's Office.

1 ALJ RODDA: And on behalf of the Arizona
2 Utility Investors Association.

3 MR. MEEK: Thank you, Your Honor. Walter
4 Meek, President of AUIA.

5 ALJ RODDA: And an individual, Billy
6 Burtnett. Is he present today? Okay. No one is
7 indicating that they are he.

8 Mr. Magruder.

9 MR. MAGRUDER: Marshall Magruder is here,
10 ma'am, Your Honor.

11 ALJ RODDA: And on behalf of the IBEW Local
12 769 and 387.

13 MR. ENOCH: Good morning, Your Honor. This
14 is Nicholas Enoch of Lubin & Enoch on behalf of IBEW
15 Locals 387 and 769.

16 ALJ RODDA: I am sorry, whoever is on the
17 phone and having another conversation, you need to mute
18 your phone or something because we are picking up that
19 conversation.

20 COM. HATCH-MILLER: I didn't get the name.
21 I'm sorry.

22 MR. ENOCH: Good morning, Nicholas Enoch
23 with the law firm of Lubin & Enoch.

24 ALJ RODDA: Is there anybody representing
25 the Laughlin Ranch, LLC?

1 Mr. Robertson.

2 MR. ROBERTSON: Good morning, Your Honor.
3 Lawrence C. Robertson, Jr., on behalf of myself as an
4 electric and gas customer of UniSource in Santa Cruz
5 County, and good morning, Commissioner Hatch-Miller and
6 Commissioner Mayes.

7 If I might offer a brief comment as to my
8 informal attire, I was unaware until 9:45 this morning
9 there was a prehearing conference today. I had been
10 planning on working on a conservation easement in my
11 office, so I do apologize.

12 ALJ RODDA: Well, we are happy to have you
13 here, no matter how you are attired.

14 On behalf of the Punto de Vista Property
15 Owners Association.

16 MR. GOLDSTONE: This is Marc Goldstone
17 representing the Punto de Vista Property Owners
18 Association.

19 ALJ RODDA: And Mr. Goldstone, are you a
20 member of the association?

21 MR. GOLDSTONE: I am a director/member.

22 ALJ RODDA: Okay.

23 And on behalf of Mohave Valley Elementary
24 School District.

25 MR. SAUCEMAN: Yes, Phil Sauceman,

1 superintendent, Mohave Valley Elementary School
2 District.

3 ALJ RODDA: Before I get to Staff, are there
4 any other intervenors who I forgot to mention?

5 On behalf of Commission Staff.

6 MR. KEMPLEY: Thank you, Your Honor, good
7 morning, good morning, Commissioners, Christopher
8 Kempley on behalf of Commission Staff.

9 ALJ RODDA: It's nice to see you all here in
10 Tucson.

11 I'll just note that the purpose of this
12 proceeding this morning is for the scheduling of
13 witnesses and other, to discuss any other procedural
14 matters that we need to in connection with the hearing
15 that's set to commence on Monday, June 21st, at
16 10:00 a.m. here in this room. I'll note also that
17 there's a public comment session this evening, I believe
18 it's at 5:00 p.m. also in this room, and as is our
19 custom, there will be an opportunity for public comment
20 at the commencement of the hearing on Monday morning.

21 Okay. I am just going to confirm with you,
22 I have received prefiled written testimony from the
23 following witnesses: Mr. Pignatelli, Ms. Diaz Cortez,
24 Mr. Meek, Mr. Reiker, and Mr. Antonuk.

25 MR. KEMPLEY: Antonuk, Your Honor.

1 ALJ RODDA: I think I have a dyslexic
2 problem with that. So that's all the testimony that's
3 been filed in this matter, is that correct?

4 MR. HEYMAN: No, there was also the rebuttal
5 testimony of Scott Stuart --

6 ALJ RODDA: Oh, okay.

7 MR. HEYMAN: -- filed on behalf of UniSource
8 Energy.

9 ALJ RODDA: All right. So then we have six
10 witnesses. And as is my custom -- well, before we start
11 talking about the scheduling of witnesses, is there
12 anything that makes sense to discuss first?

13 MR. HEYMAN: Your Honor, this is Ray Heyman,
14 UniSource Energy.

15 In connection with the witnesses, we had
16 offered to have a panel of the representatives of the
17 limited partners, and that was contained in the rebuttal
18 testimony of Mr. Stuart. And so in addition to the six
19 witnesses, we would have Mr. Mark Lipschultz from KKR
20 together with Mr. Stuart, Mr. Chris Behrens from
21 J.P. Morgan Partners, and Mr. Wellford Tabor from WCP
22 available for a panel.

23 ALJ RODDA: And this panel would consist of
24 Mr. Stuart as well as these other individuals?

25 MR. HEYMAN: Yes, that's correct. I can

1 explain for you, if now is a good time, I can explain
2 how we envision to have Mr. Pignatelli and the panel
3 testify and see if that's okay.

4 ALJ RODDA: That would be good.

5 MR. HEYMAN: What we thought we would do is
6 have Mr. Pignatelli take the stand and have people
7 cross-examine him on his direct and rebuttal. It seems
8 to make sense that they go together.

9 After Mr. Pignatelli, we would ask that
10 Mr. Stuart be sworn in, the foundation laid for his
11 prefiled testimony, then the rest of the panel sworn in
12 and have the people ask questions of the panel. What we
13 want to try to avoid is questions that might be better
14 directed to another investor be asked to Mr. Stuart,
15 then him have to say, "Well, wait until the panel get
16 up." So we would rather do that all at once. Then we
17 would reserve rebuttal testimony for Mr. Pignatelli at
18 the end of the hearing. And if that's okay with the
19 parties, I would then ask that we have Tuesday a date
20 certain that the panel could be here and testify before
21 the Commission.

22 ALJ RODDA: Okay. Any reaction from any of
23 the other parties? I mean, it makes sense to me.

24 Mr. Pozefsky.

25 MR. POZEFSKY: It's a bit confusing to me --

1 ALJ RODDA: Could you use your microphone.

2 MR. POZEFSKY: Sure. It's a bit confusing
3 to me, not that I object, don't get me wrong, but I
4 would like a little more insight because as you are
5 aware, we first became aware of the panel, this idea of
6 the panel and rebuttal testimony. So my understanding
7 was Mr. Stuart would testify since he filed testimony,
8 and now it's my understanding that he's not going to
9 testify, the panel is going to testify, more or less on
10 his behalf. Perhaps you can see where I'm a little
11 confused. Is he not going to be available for
12 cross-examination on his testimony, his rebuttal
13 testimony?

14 ALJ RODDA: Well, I fully expect Mr. Stuart
15 to be available for cross-examination.

16 MR. HEYMAN: Your Honor and Commissioners,
17 that was our expectation.

18 Maybe I wasn't clear. What we anticipate
19 doing is have Mr. Stuart here present, we would lay the
20 foundation on his prefiled testimony and have him
21 available for cross-examination at the same time that
22 the rest of the panel was available for
23 cross-examination. That way, if there is a question
24 that is asked of Mr. Stuart that may be better answered
25 by Mr. Lipschultz who is also with KKR, we don't have to

1 keep on deferring questions. If it is a question asked
2 of Mr. Stuart that might be better answered by a
3 J.P. Morgan representative, he can do it at that point.
4 Mr. Stuart will be available for cross-examination on
5 what he filed as prefiled testimony, and we anticipate
6 there will be questions of the other limited partners
7 that would fall outside the scope of Mr. Stuart's
8 prefiled testimony. We recognize that, and we are
9 willing to proffer these witnesses for that purpose.

10 MR. POZEFSKY: Okay.

11 ALJ RODDA: Okay.

12 Mr. Robertson.

13 MR. ROBERTSON: Your Honor, I support the
14 use of a panel. I've used them in the past in similar
15 situations in rate case proceedings, and one of the
16 benefits is you have the opportunity to get a complete
17 collective response to a line of inquiry at one point in
18 the record, and it makes it much easier for parties and
19 the Commissioners when they are reviewing the record
20 later on. I would also support the suggestion by
21 Mr. Heyman that the panel appear and be questioned on
22 Tuesday. I have a hearing in court Monday afternoon,
23 and I anticipate I will have some questions of the panel
24 members.

25 Thank you.

1 ALJ RODDA: Okay. Mr. Kempley.

2 MR. KEMPLEY: Thank you, Your Honor. I
3 don't have any objection to the use of the panel or the
4 proposed date and time. I would ask if Mr. Heyman would
5 give us the names and affiliations of the panel members
6 again a little more slowly. I didn't get them all
7 written down.

8 MR. HEYMAN: I would be happy to do that, if
9 that's okay, Your Honor.

10 ALJ RODDA: Yes, please.

11 MR. HEYMAN: Mr. Scott Stuart, S-t-u-a-r-t,
12 who is with KKR; Mr. Marc, M-a-r-c, Lipschultz, who is
13 also with KKR; Mr. Chris Behrens, B-e-h-r-e-n-s, who is
14 with J.P. Morgan Partners; and Mr. Wellford,
15 W-e-l-l-f-o-r-d, Tabor, T-a-b-o-r, who is with WCP. And
16 they have been involved in the transaction and will be
17 able to answer questions relating to the transaction.

18 (Commissioner William Mundell enters the
19 proceedings.)

20 ALJ RODDA: All right. Anything else
21 necessary?

22 MR. HEYMAN: In connection with that, I
23 wanted people to know we will be filing witness
24 summaries today for Mr. Pignatelli and Mr. Stuart, and
25 we will endeavor to get those faxed or e-mailed to the

1 parties so they do have them today.

2 ALJ RODDA: Okay.

3 COM. MAYES: Your Honor.

4 ALJ RODDA: Yes, Commissioner Mayes.

5 COM. MAYES: Just Mr. Heyman, quickly, maybe
6 I missed it, you may have already stated this, but
7 Mr. Pignatelli would give direct before the panel and
8 then some after the panel or where would he come in
9 reference to the panel?

10 MR. HEYMAN: Commissioner Mayes, you are
11 correct. We would have Mr. Pignatelli lay the
12 foundation for his direct and rebuttal testimony and
13 allow the parties to cross-examine Mr. Pignatelli before
14 the panel, and then at the end of I guess everybody
15 else's case when we would normally have our rebuttal
16 testimony, we would have Mr. Pignatelli retake the
17 stand. So he will be available for cross-examination at
18 that time as well.

19 ALJ RODDA: Okay. What I am going to do
20 now, does anyone on the phone, any of the parties on the
21 phone have any comments on that procedure?

22 MR. WHITE: No.

23 ALJ RODDA: Let me ask the parties on the
24 phone, are you planning on being present here in Tucson
25 on Monday?

1 MR. GOLDSTONE: This is Marc Goldstone with
2 the Punto de Vista Property Owners Association. It was
3 my understanding that this would be a call-in meeting
4 also on Monday.

5 ALJ RODDA: Okay. So you want to
6 participate by telephone?

7 MR. GOLDSTONE: Yes, I would.

8 ALJ RODDA: Is that the preference of all
9 the other parties on the phone?

10 MR. WHITE: Your Honor, John White, Mohave
11 County. If it's appropriate, I would like to do that,
12 too, if that's available.

13 ALJ RODDA: Yes, I am working on making that
14 an available option for the participants in Mohave
15 County.

16 MR. WHITE: Yes, ma'am, thank you. I would
17 like to appear by telephone also.

18 ALJ RODDA: Okay. Mr. Sauceman, are you
19 going to be participating in the hearing?

20 MR. SAUCEMAN: I would prefer to do it by
21 telephone also if possible, yes.

22 ALJ RODDA: Okay. All right.

23 So what I am going to do now is ask the
24 parties, I am trying to get an estimate of how long the
25 hearing is going to go, and what days we'll be

1 scheduling certain witnesses. So what I am going to do
2 is ask the parties how much cross-examination they
3 expect to have of other witnesses. And we all
4 understand that this does not include time for brief
5 summaries or rejoinder testimony as well as the wild
6 card of questioning from the bench. So the
7 Commissioners can rest assured, I am not going to ask
8 them today how many questions they are going to have on
9 Monday, but I will ask, Mr. Heyman, your expectations
10 for cross-examination of Ms. Diaz Cortez.

11 MR. HEYMAN: In anticipation of your
12 questions, I tried to think that out, and the other
13 caveat I would put is this is only anticipating that the
14 answers are not drawn-out answers, but sometimes it's
15 easier to ask the questions than listen to the answers.

16 ALJ RODDA: That's a good point.

17 MR. HEYMAN: With Ms. Diaz Cortez, I
18 anticipate about three-quarters of an hour to an hour.

19 ALJ RODDA: And do you anticipate any
20 questions for Mr. Meek?

21 MR. HEYMAN: About 10 to 15 minutes of
22 hard-hitting cross.

23 ALJ RODDA: And Mr. Reiker?

24 MR. HEYMAN: About 10 to 15 minutes as well.

25 ALJ RODDA: And Mr. Antonuk?

1 MR. HEYMAN: I have about an hour to an hour
2 and a half with Mr. Antonuk.

3 ALJ RODDA: Okay. And I will ask
4 Mr. Pozefsky for Mr. Pignatelli.

5 MR. POZEFSKY: Probably about an hour, Your
6 Honor.

7 ALJ RODDA: And for Mr. Stuart, et al.?

8 MR. POZEFSKY: Probably about, I would say
9 about a good hour also.

10 ALJ RODDA: Okay. And for Mr. Meek --

11 MR. POZEFSKY: No questions anticipated.

12 ALJ RODDA: -- or any of the Staff
13 witnesses?

14 MR. POZEFSKY: Probably about 15 minutes
15 with Staff.

16 ALJ RODDA: Total or --

17 MR. POZEFSKY: That would be with
18 Mr. Antonuk, 15 to half an hour, let's say.

19 ALJ RODDA: We also understand it depends on
20 the earlier questioning, how many additional questions
21 you might have.

22 I'm just going to start, I'm going to stay
23 with the people in the room and I will get to you all on
24 the phone because it is easier. Mr. Enoch, what is your
25 estimate for Mr. Pignatelli?

1 MR. ENOCH: I, overall, minimal for all of
2 the witnesses. There may be just a few questions.

3 ALJ RODDA: I'm sorry, someone coughed while
4 you said that.

5 MR. ENOCH: There may be only a few
6 questions overall. I don't anticipate many questions.

7 ALJ RODDA: So minimal.

8 MR. ENOCH: Minimal.

9 ALJ RODDA: Mr. Magruder.

10 MR. MAGRUDER: Probably about three-quarters
11 of an hour with Mr. Pignatelli, about 20 minutes with
12 the panel, about 20 minutes with Ms. Diaz Cortez, and
13 maybe 20 minutes with Mr. Antonuk.

14 ALJ RODDA: Okay. And Mr. Robertson.

15 MR. ROBERTSON: Your Honor, with regard to
16 Mr. Pignatelli, Mr. Stuart, and Mr. Antonuk, I would
17 estimate at most 30 to 45 minutes with each. I have not
18 as yet seen the testimony of RUCO or of Mr. Meek, so as
19 a conservative estimate, I will say maybe 15 to 20
20 minutes, if any. And with regard to the panel, it will
21 in part depend on what comments they might make in the
22 nature of opening statements and what has gone on
23 beforehand.

24 ALJ RODDA: Okay. And Mr. Meek, how about
25 you? Do you have any for Mr. Pignatelli?

1 MR. MEEK: Frankly, Your Honor, at this
2 moment I don't have a clue, but I think a fair guess
3 would be 15 to 20 minutes for Mr. Pignatelli, 15 to 20
4 for the panel, 15 to 20 for Mr. Antonuk, and that's it.

5 ALJ RODDA: Okay. Mr. Kempley.

6 MR. KEMPLEY: Thank you, Your Honor. On
7 Staff's part, we would anticipate an hour to an hour and
8 a half with Mr. Pignatelli, probably 15 to 30 minutes
9 with the panel, and no consequential cross-examination
10 for any other witnesses.

11 ALJ RODDA: Okay.

12 Mr. White.

13 MR. WHITE: Your Honor, I anticipate no
14 examination of RUCO witnesses or Staff witnesses, and
15 only very limited examination of UniSource witnesses if
16 Mr. Pozefsky and Mr. Kempley don't ask the questions
17 that I would ask.

18 ALJ RODDA: Okay.

19 And Mr. Goldstone, have you been able to
20 formulate an estimate of cross-examination?

21 MR. GOLDSTONE: It's my estimation that
22 there will be little, if any, cross-examination. I
23 expect that the time would be the Commissioners
24 themselves asking questions of my testimony.

25 ALJ RODDA: Have you filed testimony in this

1 matter?

2 MR. GOLDSTONE: Yes, I believe we filed our
3 response, and they may have some questions on that.

4 ALJ RODDA: Did you, when did you do that?

5 MR. GOLDSTONE: Well, I think it was about
6 two weeks ago.

7 ALJ RODDA: Was your response in the form of
8 a letter?

9 MR. GOLDSTONE: Yes, it was, and it was from
10 the Punto de Vista Property Owners Association signed by
11 two other officers.

12 ALJ RODDA: Do you have that letter in front
13 of you?

14 MR. GOLDSTONE: I knew you were going to ask
15 that.

16 ALJ RODDA: I'm just trying to get a date.

17 MR. GOLDSTONE: I will search for it.

18 ALJ RODDA: The reason I asked is I wanted
19 to get a date because I think I have seen that letter
20 and can make copies available to the parties.

21 MR. GOLDSTONE: I believe we distributed
22 them to the long list of participants.

23 ALJ RODDA: I'm getting blank stares from
24 people.

25 MR. GOLDSTONE: I know I printed up about a

1 dozen mail-in labels for that.

2 ALJ RODDA: Okay. So you're planning on
3 being available for, you're planning on adopting that
4 letter as your testimony and being available for
5 cross-examination on that letter?

6 MR. GOLDSTONE: Yes, I believe so, to answer
7 any questions and, you know, that may come up from the
8 Commission. I was also in attendance at the hearing in
9 Kingman and gave quite a bit of testimony there, too.

10 ALJ RODDA: Okay. And I'll just note for
11 the record that they hadn't been granted intervention at
12 the time of the Kingman public comment.

13 MR. GOLDSTONE: And I believe we have been
14 at this time.

15 ALJ RODDA: I'm sorry, you have what?

16 MR. GOLDSTONE: We have been granted
17 intervening status as of this point in time.

18 ALJ RODDA: Yes.

19 MR. GOLDSTONE: Great.

20 COM. MUNDELL: And to that point --

21 ALJ RODDA: This is Commissioner Mundell.
22 Commissioner Mundell.

23 COM. MUNDELL: To that point, Judge, that is
24 the reason I let them speak at that meeting. I
25 conducted that hearing, and they weren't an intervenor

1 at that point, so that is why I allowed them to speak.

2 ALJ RODDA: Okay. I don't know, maybe it
3 was made clear at that meeting, usually when a party has
4 been granted intervention, the participation is at the
5 hearing, and generally they are not allowed to make
6 public comment during the public comment portion of the
7 proceeding. But --

8 MR. GOLDSTONE: Okay. I have no intention of
9 making comment during the public period.

10 ALJ RODDA: Okay. And I don't -- how about
11 Mohave Valley Elementary School District, Mr. Sauceman,
12 do you have any anticipated examination time?

13 MR. SAUCEMAN: Yes, this is Phil Sauceman,
14 and no, I do not anticipate any examination time.

15 ALJ RODDA: I'm just looking at my notes of
16 estimated times -- yes, Mr. Heyman.

17 MR. HEYMAN: I'm really not clear then on
18 what Mr. Goldstone is going to be doing at the hearing.
19 Is the letter going to come in as testimony, is it going
20 to come in as evidence? I mean, I haven't seen the
21 letter, so I don't know.

22 ALJ RODDA: You know, I don't know, because
23 I, I can't recall the exact -- it's my understanding
24 that the issue, one of the issues up in Mohave County is
25 certain entities are served by whatever the name of the

1 affiliate is up in Mohave County that may have a
2 preference to be served by Mohave --

3 A MALE VOICE: Electric Coop.

4 ALJ RODDA: -- Electric Coop. Frankly, that
5 exact issue of service territory I think is only, is not
6 an issue at this proceeding. What may be at issue in
7 this proceeding, in my view, and I guess I have three
8 Commissioners up here who may have a different view, is
9 were negotiations underway prior to this proceeding and
10 were promises made and/or investment decisions that have
11 been made up in Mohave County that may or may not
12 continue under a different ownership regime. But it
13 seems to me that the exact issue of who is going to
14 serve this particular piece of property is not and
15 should not be at issue in this proceeding, and so I
16 guess I'd like to know if any of the parties have any
17 comments on that. And --

18 MR. GOLDSTONE: This party, Marc Goldstone,
19 does have a comment, Your Honor. My comment is, and
20 your discussion is noted. As far as what the service
21 territory and whether that should be at issue, service
22 reliability is certainly at issue, and that is really
23 the crux of our complaint. And we feel that, you know,
24 I guess I don't want to go into testimony here, but
25 service reliability is definitely a big part of our

1 concern, and I would like to speak to that.

2 ALJ RODDA: Okay. I can see that as an
3 issue.

4 COM. MAYES: Your Honor, if I could say, I
5 would agree with Mr. Goldstone and with you about the
6 fact, and I certainly intended to raise some of the
7 issues that were raised by the homeowners association up
8 there at our Kingman meeting, and I think they would be
9 certainly relevant, especially as it has to do with
10 reliability and customer service in the area that
11 they're talking about.

12 ALJ RODDA: Okay. I do think service
13 reliability is an issue that has been raised in this
14 proceeding that's appropriate.

15 Any other comments from the bench?

16 COM. MUNDELL: Other than I would agree,
17 reliability is an issue, but the issue of who provides
18 that reliability may or may not be relevant in this
19 proceeding. But the reliability itself seems to me is
20 an issue not only for this, for that area but for all
21 the territory that is subject to the acquisition.

22 ALJ RODDA: Okay. Then what I expect to do
23 is we'll find the letter from the homeowners
24 association. I'll try to, before you leave, I think I
25 have a copy, and we can make copies certainly for the

1 parties present as well as anyone who is not present who
2 needs a copy. We can deal with it, I would treat it
3 like prefiled testimony, and he would be available for
4 cross-examination on it.

5 COM. MUNDELL: Judge, I just, I have a
6 follow-up for Mr. Robertson. I didn't quite understand
7 your comment that you hadn't had a chance to read RUCO's
8 testimony. I mean, I've got, I didn't understand that
9 statement.

10 MR. ROBERTSON: I was a late intervenor,
11 Commissioner Mundell, or my intervention was granted
12 late, and I think by the time RUCO and Mr. Meek had
13 served theirs, I was not yet on the list. It's simply
14 that.

15 COM. MUNDELL: Okay. I thought they had
16 filed, I have the surrebuttal in front of me.

17 MR. ROBERTSON: No, I wasn't suggesting they
18 hadn't filed. I had simply not seen it.

19 COM. MUNDELL: Let me ask another question.
20 Is that the Tucson attire?

21 MR. ROBERTSON: No, you were not in the room
22 when I explained. I was unaware until 9:45 this morning
23 that there was a Prehearing Conference. I had planned
24 to be working in my office, and I apologize.

25 COM. MUNDELL: No, I'm just kidding. I

1 wondered if that was Tucson attire.

2 MR. ROBERTSON: Actually, since I live in
3 Tubac, I could try to classify it as Santa Cruz County
4 attire.

5 ALJ RODDA: Okay. So Monday morning after
6 whatever public comment still remains after tonight's
7 proceeding, we will commence with opening statements.
8 And I'm not going to limit you all, but, you know, keep
9 them brief, and following opening, we'll have
10 Mr. Pignatelli testify. Conceivably, that could take
11 the rest of the afternoon. It sort of depends on how it
12 goes.

13 If per chance it doesn't, I mean, we still
14 have an hour or so left in the day, I will just let you
15 know, my preference is to start at 10:00 a.m. on Monday
16 and go to about 5, and then start at 9:00 a.m. on all
17 subsequent days. I don't have a problem going later
18 than 5 if it makes sense to finish up a witness or just
19 to go with the flow of the proceeding. It's not my
20 intent to go until 8:00 every night because it's just
21 too much. But I will defer to if people have heartburn
22 over that and need to, need to work later.

23 COM. MUNDELL: Judge, I didn't, I may have
24 missed it. How long do you envision the hearing lasting
25 in total?

1 ALJ RODDA: I think that's what we're still
2 discussing.

3 COM. MUNDELL: Okay. I thought I might have
4 missed it. Thank you.

5 ALJ RODDA: So anyway, I was saying
6 Mr. Pignatelli sort of looks from the estimates you have
7 given me would last the rest of the afternoon.
8 Conceivably, depending on if everyone has the same
9 questions for Mr. Pignatelli and he answers them the
10 first time, we could have some extra time. With the
11 preference that the panel start on Tuesday, which I
12 think is a good idea, we could potentially get to
13 Ms. Diaz Cortez. Is she planning on attending every
14 day?

15 MR. POZEFSKY: Yes, I think so, at least
16 through her testimony. Beyond her testimony, I don't
17 know if she will be here every day.

18 ALJ RODDA: Actually, now that I look at it,
19 it's probably better to have Mr. Meek follow
20 Mr. Pignatelli since there is limited cross and maybe
21 alignment of the issues.

22 MR. POZEFSKY: How about the panel, Your
23 Honor?

24 MR. MEEK: That's fine, Your Honor. I've
25 become a 5:00 witness around here.

1 ALJ RODDA: You're a filler.

2 So conceivably, Mr. Pignatelli could spill
3 into Tuesday, depending on the extent of the
4 questioning. So what we'll do, if we finish
5 Mr. Pignatelli on Monday afternoon, we'll try to fit in
6 Mr. Meek, and depending on how that goes, we'll start
7 with the panel will be the first new, Mr. Stuart and
8 friends will be the first new witnesses on Tuesday
9 morning.

10 MR. KEMPLEY: Your Honor, before you get too
11 far down this path --

12 ALJ RODDA: Yes.

13 MR. KEMPLEY: -- I have a request that I
14 want to make, and that is Mr. Antonuk will be arriving,
15 the schedule calls for him to be here sometime Monday
16 afternoon with a departure time on Thursday. If it
17 works, what I would like to have is a date certain for
18 him on Wednesday. If he's here and otherwise it makes
19 sense in the course of the proceeding, I wouldn't hold
20 him back from taking the stand, but the date certain
21 would be the best way I think to take care of him.

22 ALJ RODDA: Okay. I have a couple of hours
23 down for the panel, so I could see the panel lasting all
24 of Tuesday morning. Again, following the panel, we
25 could have Ms. Diaz Cortez testify probably Tuesday

1 afternoon. There's actually very, there's limited
2 estimate for Mr. Reiker, so he'll probably -- if we --
3 he could potentially be on Tuesday afternoon, too.

4 MR. KEMPLEY: Your Honor, Mr. Reiker will be
5 available to take the stand whenever it makes sense in
6 the course of the proceedings, so that would
7 certainly --

8 ALJ RODDA: He's another witness we can play
9 with --

10 MR. KEMPLEY: That's correct.

11 ALJ RODDA: -- because we have limited
12 estimates of cross-examination for him. And then I
13 think it works out perfectly with Mr. Antonuk testifying
14 Wednesday morning. All right, the best laid plans, but
15 at least it's a starting point.

16 It looks to me like the original, based on
17 our discussion today, it looks like our original
18 estimate of the three-day proceeding is going to
19 actually occur. I had sort of anticipated it going
20 longer, and it could. Thursday, just so you all know,
21 Thursday morning is our regularly-scheduled securities
22 Open Meeting, and if per chance we needed, with the
23 understanding that Mr. Antonuk is leaving Thursday and
24 we will try to get him on Wednesday, no matter what,
25 that if we need Thursday, does any party have a problem

1 with starting in the afternoon?

2 MR. HEYMAN: We don't, Your Honor.

3 ALJ RODDA: Okay. All right then, are there
4 any other issues you want to discuss this morning?

5 Mr. Heyman.

6 MR. HEYMAN: I do. I just want to make sure
7 that this thing runs as smoothly as possible. How many
8 copies of exhibits should we bring with us? It was
9 helpful to know that people intended to be on the
10 telephone, because I don't want to come up with exhibits
11 and have them be short. So it seems like if we have
12 five Commissioners, the administrative law judge, the
13 court reporter and the parties present and if we have
14 one or two extras, we would be okay. That looks like we
15 are talking about 12 to 15 copies. So if that's okay --

16 ALJ RODDA: That sounds good.

17 MR. HEYMAN: Okay. The other thing is we
18 will be having just a couple of blow-ups to put on an
19 easel, and I am assuming that would be okay with you if
20 we have those put between, in the well between where the
21 counsel desk is and the witness stand is.

22 ALJ RODDA: Yes.

23 MR. HEYMAN: I realize that may be a little
24 difficult for people on this side in the back to look
25 at, but I'm hoping that they can make accommodations --

1 ALJ RODDA: Yes.

2 MR. HEYMAN: -- during a break or something
3 if they want to look at it.

4 ALJ RODDA: I found that is the easiest with
5 the court reporter to have the exhibits over there,
6 especially if someone is standing next to them and being
7 questioned at the same time.

8 MR. HEYMAN: Yes. I think that was the last
9 housekeeping matter that I had. Thank you.

10 ALJ RODDA: Okay. Any, anything from anyone
11 on the phone that you want to raise about the proceeding
12 on Monday?

13 MR. GOLDSTONE: This is Marc Goldstone with
14 Punto de Vista Property Owners Association.

15 As far as the time for us to give testimony
16 or answer questions --

17 ALJ RODDA: Oh, I'm sorry, Mr. Goldstone,
18 yes.

19 MR. GOLDSTONE: -- is it possible to
20 establish a time or at least maybe narrow it down to an
21 afternoon that we can be on the phone and be available
22 for the Commission?

23 ALJ RODDA: Yes, excellent. I had left you
24 off my master list, so I apologize for overlooking you
25 in the scheduling process.

1 MR. GOLDSTONE: And I will try to not be too
2 long-winded.

3 ALJ RODDA: I am -- either Tuesday afternoon
4 or Wednesday would be available. Do you have a
5 preference?

6 MR. GOLDSTONE: Either would work for me.
7 Whatever works best in your schedule. Wednesday would
8 probably be better.

9 ALJ RODDA: Okay. Let's take up
10 Mr. Goldstone then after Mr. Antonuk. I just want to
11 make sure we, we'll have -- you'll be our clean-up
12 witness, Mr. Goldstone.

13 MR. GOLDSTONE: Okay. I'm real good at
14 that.

15 ALJ RODDA: Okay.

16 MR. GOLDSTONE: So that would be Wednesday
17 afternoon.

18 ALJ RODDA: Yes.

19 MR. GOLDSTONE: Call in the same number?

20 ALJ RODDA: Actually, I'm going to have to
21 get back to all the parties on the phone with the number
22 that will be available for Monday morning. So we're
23 still working on exactly how we're going to provide the
24 phone service. But there will be, there will be a phone
25 available for the intervenors to participate throughout

1 the proceeding. I just don't know the number yet.

2 All right. So anyone else on the phone have
3 any questions or issues?

4 MR. SAUCEMAN: This is Phil Sauceman, Mohave
5 Valley School District. Will there be a time for us to
6 block out for the proceedings?

7 ALJ RODDA: I'm sorry, when you say block
8 out --

9 MR. SAUCEMAN: Well, for us to make comments
10 or schedule the time, Tuesday morning, Tuesday
11 afternoon?

12 ALJ RODDA: Well, you are now a party to
13 this proceeding. You will be given the opportunity to
14 make an opening statement, to participate in the
15 cross-examination of witnesses, and to participate in
16 briefing. Was it, is it, are you asking to provide
17 testimony in addition to that? I'm just trying to
18 understand what you're requesting.

19 MR. SAUCEMAN: Well, I guess my question is
20 will I need to be on the phone for all three days or the
21 whole thing or will we have certain times for our
22 proceeding.

23 ALJ RODDA: Well, when you say your
24 proceeding, I guess I don't, I'm not sure I understand
25 what you mean.

1 MR. SAUCEMAN: The testimony on behalf of
2 our district.

3 ALJ RODDA: Okay. I'm not sure exactly what
4 you want to do about this because have you filed, you
5 haven't filed prefiled testimony, have you?

6 MR. SAUCEMAN: No, we have not. We did file
7 a letter, Exhibit A dated June 9th, 2004. Did you
8 receive a copy of that, Your Honor?

9 ALJ RODDA: You know, I may have. I don't
10 have the file with me here on the bench, but was that in
11 connection with your request for intervention?

12 MR. SAUCEMAN: Yes.

13 ALJ RODDA: Okay. Well, I would propose
14 then that we have all the parties in Mohave County that
15 wish to provide testimony who have filed a written
16 letter to the docket testify on Wednesday afternoon, so
17 Mr. Goldstone and then Mr. Sauceman.

18 MR. SAUCEMAN: Thank you, Your Honor.

19 ALJ RODDA: And this -- Mr. White, you don't
20 have testimony, do you?

21 MR. WHITE: No, Your Honor. I have not, we
22 have filed no testimony from the county. Again, our
23 intervention is for the purpose of cross-examining the
24 witnesses, should that be necessary.

25 ALJ RODDA: Okay. All right. So then does

1 anyone have a problem with the Mohave School District
2 and the homeowners association testifying on Wednesday
3 after Mr. Antonuk?

4 MR. HEYMAN: We do not.

5 MR. ROBERTSON: No.

6 ALJ RODDA: Okay. Then that's when you'll
7 be up.

8 Now, in terms of you don't have to, it's up
9 to you to decide if you're going to participate in the
10 rest of the hearing, but we'll make that time available
11 for you to present your issues. Was that clear? I
12 don't know if that came out.

13 MR. SAUCEMAN: Thank you, Your Honor.

14 ALJ RODDA: Okay. All right.

15 Anything else, Mr. Heyman?

16 MR. HEYMAN: No, thank you.

17 ALJ RODDA: Mr. Kempley?

18 MR. KEMPLEY: No, Your Honor, except that I
19 think it's worth noting at this point kind of looking
20 through the estimates of cross-examination and what
21 appears to becoming a somewhat increasingly cumbersome
22 process that the one piece of testimony that you didn't
23 note was the apparent interest on the part of UniSource
24 to have Mr. Pignatelli testify a second time at the
25 conclusion of the proceeding. And with all of that,

1 really the only thing I wanted to note is that I think
2 we may, the three-day estimate may be fairly aggressive.

3 ALJ RODDA: As this proceeding has
4 progressed, that has come to my attention, too. But
5 that's what Thursday and Friday are for.

6 MR. KEMPLEY: Absolutely, Your Honor. I
7 didn't anticipate any specific action. Just thought I
8 would note that as we went along.

9 COM. MUNDELL: And just to that point,
10 Judge, Mr. Kempley, at least from my perspective, since
11 this matter really is almost a case of first impression
12 in the United States, and we have some other examples I
13 think in Ohio and Michigan, from my perspective, whether
14 it takes 3 days or, you know, 21 days, this is a very,
15 very important case to not only the companies involved
16 but to the people that are served by these utilities,
17 and it is a case of first impression in the United
18 States. So we need to go very slowly and very carefully
19 so that we are making a decision that is in the public
20 interest of the people of Arizona.

21 ALJ RODDA: Okay. And I just want to note
22 for, especially for the individuals, intervenors up in
23 Mohave County, we are talking Wednesday afternoon for
24 your testimony. Time can slip as you gather, by our
25 discussion here today. That might not be until

1 Thursday, so I just want to warn you. But we can also
2 make adjustments to the schedule depending on
3 individuals' needs. But we won't know that until we get
4 into it.

5 Okay. Mr. Magruder.

6 MR. MAGRUDER: During last night's public
7 comments in Nogales, they indicated there might be an
8 800 number for the public to listen in. Has that been
9 arranged?

10 ALJ RODDA: It's my understanding, I don't
11 have any information on that now, but that we might have
12 more information tomorrow in terms of making, we could
13 make that available by a press release.

14 MR. MAGRUDER: A press release or
15 announcement I was going to suggest.

16 COM. MAYES: Your Honor, yes, I announced
17 that yesterday, and it is my understanding that we are
18 working at the Commission today to try to make the 1-800
19 number happen, and I would assume we would get it out on
20 our website. I would assume we will put an announcement
21 on the website today or tomorrow to let people know and
22 also maybe do a press release.

23 MR. MAGRUDER: Thank you.

24 ALJ RODDA: All right. So I know that this
25 has been, this is, a lot of thought has been put into

1 this proceeding to make sure as many people as possible
2 can participate, and the Commission has gone to extra
3 lengths to make sure that that happens, so I just want
4 to make that comment.

5 All right. With that, I will see all the
6 parties and listen to the parties on the phone Monday
7 morning at 10:00 a.m. here in this room. For those of
8 you on the phone, I will have to, my office will be in
9 contact with you for the call-in number for your
10 participation. It's my understanding that there will
11 be, just so you know, there will be two different phone
12 lines, one for members of the public to call in and
13 listen only, and then a separate phone line for
14 intervenors who will be participating interactively.

15 So with that, we'll adjourn the proceeding
16 and see you all on Monday.

17 (The proceedings concluded at 10:59 a.m.)

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1 STATE OF ARIZONA)
 2) ss.
 3 COUNTY OF MARICOPA)
 4
 5
 6

7 I, DAWNA J. BOSWELL, Certified Court
 8 Reporter No. 50326 for the State of Arizona, do hereby
 9 certify that the foregoing printed pages constitute a
 10 full, true and accurate transcript of the proceedings
 11 had in the foregoing matter, all done to the best of
 12 my skill and ability.

13
 14 WITNESS my hand this 18th day of June, 2004.

15
 16 Dawna J. Boswell

17 DAWNA J. BOSWELL
 18 Certified Court Reporter
 19 Certificate No. 50326
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